

Decision **DRAFT DECISION OF ALJ WALKER** (Mailed 7/8/02)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of Verizon California Inc. for Arbitration Pursuant to Section 252(i) of the Telecommunications Act of 1996 and 47 C.F.R. § 51.809 to Prevent the Adoption of an Alternative Dispute Resolution Clause from another Interconnection Agreement Requested by ICG Telecom Group, Inc. (U 5406-C)

Application 02-02-028
(Filed February 22, 2002)

OPINION DISMISSING PETITION FOR ARBITRATION

1. Summary

Because the underlying issue prompting this matter has been resolved, the petition for arbitration filed by Verizon California Inc. (Verizon) is dismissed. This proceeding is closed.

2. Discussion

Verizon sought arbitration to prevent ICG Telecom Group, Inc. (ICG) from adopting an alternative dispute resolution (ADR) clause from an interconnection agreement between Verizon and another telecommunications carrier. ICG had sought to adopt the ADR clause through the filing of its Advice Letter (AL) 110. On May 20, 2002, ICG filed its AL 110A withdrawing AL 110. Accordingly, the underlying dispute between the parties has been resolved.

ICG requested dismissal of the arbitration.¹ It also asked that, as part of the order, the Commission vacate an Administrative Law Judge's Ruling (the ALJ Ruling) dated April 25, 2002, which denied ICG's motion to dismiss the Verizon petition. In a response filed June 12, 2002, Verizon does not oppose dismissal of this arbitration, but it opposes the request to vacate the ALJ Ruling.

Since there is no longer a case or controversy before us, it is appropriate to grant the request for dismissal of the arbitration. There is, however, no valid reason to vacate an interlocutory ruling, and we decline to do so. ICG is concerned that the ALJ Ruling will be cited as precedent in other proceedings, but since the Commission is not bound by a ruling that never came before it, the precedential value of the ruling is limited. ICG was free to pursue the arbitration and the merits of the ALJ Ruling before the full Commission, but it declined to do so

3. Comments on Draft Decision

The draft decision of the arbitrator/administrative law judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were received on

Findings of Fact

1. On February 8, 2002, ICG filed AL 110 to adopt the ADR provision in an earlier interconnection agreement between Verizon and another telecommunications company.

¹ ICG also withdraws its pending motions concerning treatment of confidential information. There are no other motions pending in this proceeding.

2. On February 22, 2002, Verizon filed its petition for arbitration to prevent ICG's adoption of the ADR provision.

3. At an Initial Arbitration Meeting on April 15, 2002, the parties agreed that an ICG motion to dismiss the petition for arbitration had been briefed by both sides and was ready for resolution.

4. ICG's motion to dismiss the petition for arbitration was denied in an ALJ Ruling dated April 25, 2002.

5. On May 20, 2002, ICG filed its AL 110A withdrawing AL 110.

6. ICG requests dismissal of the petition for arbitration and asks that the ALJ Ruling dated April 25, 2002, be vacated.

7. Verizon does not oppose the request for dismissal of the petition for arbitration, but it objects to the request that the ALJ Ruling be vacated.

Conclusions of Law

1. Because the underlying issue prompting this matter has been resolved, the petition for arbitration filed by Verizon should be dismissed.

2. There is no valid reason to vacate the interlocutory ALJ Ruling, and that request should be denied.

ORDER

IT IS ORDERED that:

1. The petition of Verizon California Inc. for arbitration pursuant to Section 252(i) of the Telecommunications Act of 1996 and 47 C.F.R. § 51.809 is dismissed.

2. The request of ICG Telecom Group, Inc. to vacate the Administrative Law Judge's Ruling of April 25, 2002 is denied.

3. Application 02-02-028 is closed.

This order is effective today.

Dated _____, 2002, at San Francisco, California.